



[4310-T2]

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR-2011-0008]

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of an extension of a currently approved information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Office of Natural Resources Revenue (ONRR) is notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 1243. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments on or before **INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER***.

ADDRESSES: Submit written comments by either FAX (202) 395-5806 or e-mail (OIRA_Docket@omb.eop.gov) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1012-0006).

Please also submit a copy of your comments to ONRR by one of the following methods:

- Electronically go to <http://www.regulations.gov>. In the entry titled “Enter Keyword or ID,” enter ONRR-2011-0008, and then click search. Follow the instructions to submit public comments. We will post all comments.
- Mail comments to Hyla Hurst, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 64000A, Denver, Colorado 80225. Please reference ICR 1012-0006 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1012-0006 in your comments.

FOR FURTHER INFORMATION CONTACT: Hyla Hurst, telephone (303) 231-3495, or e-mail hyla.hurst@onrr.gov. You may also contact Hyla Hurst to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information. You may also review the ICR online at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 1243—Suspensions Pending Appeal and Bonding—Office of Natural Resources Revenue.

OMB Control Number: 1012-0006.

Bureau Form Numbers: ONRR-4435, ONRR-4436, and ONRR-4437.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental

Shelf (OCS). The Secretary is required by various laws to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected in accordance with applicable laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Public laws pertaining to mineral leases on Federal and Indian lands are posted on our website at http://www.onrr.gov/Laws_R_D/PublicLawsAMR.htm.

If ONRR determines that a lessee has not properly reported or paid, we may issue an order to pay additional royalties, a Notice of Noncompliance, or a Civil Penalty Notice requiring correct reporting or payment. Lessees then have a right to appeal those ONRR actions.

Regulations at 30 CFR part 1243 govern the submission of appropriate surety instruments to suspend compliance with orders or decisions and to stay the accrual of civil penalties (if the Office of Hearings and Appeals grants a lessee's petition to stay accrual of civil penalties), pending administrative appeal for Federal and Indian leases. For Federal oil and gas leases, under 30 U.S.C. 1724(l) and its implementing regulations in 30 CFR part 1243, appellants who are requesting a suspension without providing a surety may submit information to demonstrate financial solvency. This ICR covers the burden hours associated with submitting financial statements or surety instruments required to stay an ONRR order, decision, or accrual of civil penalties.

Stay of Payment Pending Appeal

Title 30 CFR 1243.1 explains how lessees or recipients of ONRR orders may suspend compliance with an order if they appeal in accordance with 30 CFR part 1290. Pending appeal, ONRR suspends the payment requirement if the appellant submits a formal agreement of payment in case of default, such as a bond or other surety, or, for Federal oil and gas leases, demonstrates financial solvency. If the Office of Hearings and Appeals grants a lessee's, or other recipient of a Notice of Noncompliance or Civil Penalty Notice, request to stay the accrual of civil penalties under 30 CFR 1241.55(b)(2) and 1241.63(b)(2), the lessee or other recipient must post a bond or other surety, or, for Federal oil and gas leases, demonstrate financial solvency.

The ONRR accepts the following surety types: Form ONRR-4435, Administrative Appeal Bond (formerly Form MMS-4435); Form ONRR-4436, Letter of Credit (formerly Form MMS-4436); Form ONRR-4437, Assignment of Certificate of Deposit (formerly Form MMS-4437); Self-bonding; and U.S. Treasury Securities.

When an appellant selects and puts one of the surety types in place, the appellant must maintain the surety until completion of the appeal. If the appeal is decided in favor of the appellant, ONRR returns the surety to the appellant. If the appeal is decided in favor of ONRR, then we may take action to collect the total amount due or draw down on the surety. We draw down on a surety if the appellant fails to pay or fails to comply with requirements relating to amount due, timeframe, or surety submission or resubmission. Whenever ONRR must draw down on a surety, we must draw down the total amount due, which is defined as unpaid principal plus the interest accrued to the projected receipt date

of the surety payment. Appellants may refer to the Surety Instrument Posting Instructions, which are on our website at <http://www.onrr.gov/FM/Forms/default.htm>.

Forms and Other Surety Types

Form ONRR-4435, Administrative Appeal Bond

Appellants may file Form ONRR-4435, Administrative Appeal Bond, which ONRR uses to secure the financial interests of the public and Indian lessors during the entire administrative and judicial appeal process. Under 30 CFR 1243.4, appellants must submit their contact and surety amount information on the bond to obtain the benefit of suspension of an obligation to comply with an order. A surety company that the U.S. Department of the Treasury approves (see Department of the Treasury Circular No. 570, as revised periodically in the *Federal Register*) must issue the bond. The ONRR Director or the ONRR-delegated bond-approving officer maintains these bonds in a secure facility. After the appeal has concluded, ONRR may release and return the bond to the appellant or collect payment on the bond. If collection is necessary for a remaining balance, ONRR will issue a demand for payment to the surety company with a notice to the appellant. We also will include all interest accrued on the affected bill.

Form ONRR-4436, Letter of Credit

Appellants may choose to file Form ONRR-4436, Letter of Credit (LOC), with no modifications. Requirements at 30 CFR 1243.4 continue to apply. A bank with a minimum Fitch rating of “C” must notarize and issue the LOC for appellants for a LOC of less than \$1 million; “B/C” for a LOC between \$1 million and \$10 million; or “B” for a LOC over \$10 million. A Fitch rating is a bank rating provided by Fitch, Inc., and is

available at <http://www.fitchratings.com>. The LOC must have a minimum coverage period of 1 year and be automatically renewable for up to 5 years.

The appellant is responsible for verifying that the bank provides a current Fitch rating to ONRR. If the issuing bank's rating falls below the minimum acceptable level, the appellant must submit a satisfactory replacement surety within 14 days or ONRR will draw down the existing LOC. If the bank issuing the LOC chooses not to renew the existing LOC, it must provide ONRR with a notice of its decision not to renew 30 days prior to expiration of the LOC. After the appeal concludes, ONRR may release and return the LOC to the appellant or collect payment on the LOC. If collection is necessary for a remaining payment balance, ONRR will issue a demand for payment, which includes all interest assessed on the affected bill, to the bank with a notice to the appellant.

Form ONRR-4437, Assignment of Certificate of Deposit

Appellants also may choose to secure a debt using a Certificate of Deposit (CD) from their bank and by submitting Form ONRR-4437, Assignment of Certificate of Deposit. Appellants must file the request with ONRR prior to the invoice due date. We will accept only a book-entry CD that explicitly assigns the CD to the ONRR Director. The CD must be issued by a bank with the minimum required Fitch rating or be confirmed by a bank with an acceptable rating. The acceptable ratings for a CD are the same as for a LOC discussed above. If collection of the CD is necessary for a payment balance, ONRR will return unused CD funds to the appellant after total settlement of the appealed issues including applicable interest charges.

Self-bonding

For Federal oil and gas leases, regulations at 30 CFR 1243.201 do not require a surety instrument when an appellant periodically demonstrates, to the satisfaction of ONRR, that the guarantor or appellant is financially solvent or otherwise able to pay the obligation. Appellants must submit a written request to “self-bond” every time a new appeal is filed. To evaluate the financial solvency and exemption from requirements of appellants to maintain a surety related to an appeal, ONRR requires appellants to submit a consolidated balance sheet subject to annual audit. In some cases, we also require copies of the most recent tax returns (up to 3 years) filed by appellants.

In addition, appellants must annually submit financial statements subject to annual audit to support a minimum net worth of \$300 million. The ONRR uses the consolidated balance sheet or business information supplied to evaluate the financial solvency of a lessee, designee, or payor seeking to demonstrate financial solvency to stay its payment obligation pending appeal. If appellants do not have a consolidated balance sheet documenting their net worth or if they do not meet the \$300 million net worth requirement, ONRR selects a business information or credit reporting service to provide information concerning an appellant’s financial solvency. We charge the appellant a \$50 fee each time we need to review data from a business information or credit reporting service. The fee covers our costs to determine an appellant’s financial solvency.

U.S. Treasury Securities

Appellants may choose to secure their debts by requesting to use a U.S. Treasury Security (TS). Appellants must file a letter of request with ONRR prior to the invoice due date. The TS must: (1) be a U.S. Treasury note or bond with maturity equal to or

greater than 1 year; (2) 120 percent of the appealed amount plus 1 year of estimated interest (necessary to protect ONRR against interest rate fluctuations); and (3) be a book-entry TS. Book-entry securities are securities that are recorded in electronic records rather than as paper certificates.

OMB Approval

We are requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge the fiduciary duties of the office and also may result in loss of royalty and other payments.

The ONRR protects proprietary information submitted under this collection. We do not collect information of a sensitive nature in this ICR. A response is mandatory in order to suspend compliance with an order pending appeal.

Frequency: Annually and on occasion.

Estimated Number and Description of Respondents: 105 Federal or Indian appellants.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 210 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following table shows the estimated burden hours by CFR section and paragraph:

Respondents' Estimated Annual Burden Hours

Citation 30 CFR Part 1243	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
1243.4(a)(1)	How do I suspend compliance with an order? (a) If you timely appeal an order, and if that order or portion of that order: (1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency * * *.	2 hours	40 (Forms ONRR-4435, ONRR-4436, ONRR-4437; or TS)	80
1243.6	When must I or another person meet the bonding or financial solvency requirements under this part? If you must meet the bonding or financial solvency requirements under §1243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order.	Burden hours covered under §1243.4(a)(1).		
1243.7(a)	What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant? If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency * * * (a) Must notify ONRR in writing * * * that you are assuming the appellant's responsibility * * *.	Burden hours covered under §1243.4(a)(1).		

Citation 30 CFR Part 1243	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
1243.8(a)(2) and (b)(2)	When will ONRR suspend my obligation to comply with an order? (a) <i>Federal leases.</i> * * * (2) If the amount under appeal is \$10,000 or more, ONRR will suspend your obligation to comply with that order if you: (i) Submit an ONRR-specified surety instrument under subpart B of this part within a time period ONRR prescribes; or (ii) Demonstrate financial solvency under subpart C. (b) <i>Indian leases.</i> * * * (2) If the amount under appeal is \$1,000 or more, ONRR will suspend your obligation to comply with that order if you submit an ONRR-specified surety instrument under subpart B of this part within a time period ONRR prescribes.	Burden hours covered under §1243.4(a)(1).		
1243.101(b)	How will ONRR determine the amount of my bond or other surety instrument? * * * (b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually * * *.	Burden hours covered under §1243.4(a)(1).		
1243.200(a) and (b)	How do I demonstrate financial solvency? (a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the ONRR bond-approving officer, up to 3 years of tax returns to the ONRR, * * *. (b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date ONRR first determined that you demonstrated financial solvency as long as you have active appeals, or whenever ONRR requests. * * *	2 hours	65 (Self-bonding submissions)	130

Citation 30 CFR Part 1243	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
1243.201 (c)(1), (c)(2)(i) and (c)(2)(ii) and (d)(2)	How will ONRR determine if I am financially solvent? *** (c) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than \$300 million, you must submit ***: (1) A written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and (2) A nonrefundable \$50 processing fee: (i) You must pay the processing fee ***. (ii) You must submit the fee with your request *** and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency *** and you have active appeals. (d)*** (2) For us to consider you financially solvent, the business-information or credit-reporting service or program must demonstrate your degree of risk as low to moderate: ***	Burden hours covered under §§1243.4(a)(1) and 1243.200(a) and (b).		
1243.202(c)	When will ONRR monitor my financial solvency? *** (c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other ONRR-specified surety instrument under subpart B.	Burden hours covered under §1243.4(a)(1).		
TOTAL BURDEN			105	210

Estimated Annual Reporting and Recordkeeping “Non-hour” Cost Burden: There are no additional recordkeeping costs associated with this information collection. However, ONRR estimates five appellants per year will pay a \$50 fee to obtain credit data from a business information or credit reporting service, which is a total “non-hour” cost burden of \$250 per year (5 appellants per year x \$50 = \$250).

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency to “* * * provide 60-day notice in the *Federal Register* * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.” Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the *Federal Register* on May 4, 2011 (76 FR 25367), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the ADDRESSES section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Public Comment Policy: We post all comments, including names and addresses of respondents, at <http://www.regulations.gov>. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be

advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so.

Information Collection Clearance Officer: Karen Burke (703) 487-3896.

____November 7, 2011_____

Date

Gregory J. Gould
Director,
Office of Natural Resources Revenue

[FR Doc. 2011-29298 Filed 11/10/2011 at 8:45 am; Publication Date: 11/14/2011]